HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO. 14068 OF 2006

BETWEEN

Eppala China Venkateswarlu & others

.....Petitioners

And

The Secretary to Government
Social Welfare (F) Department,
Government of Andhra Pradesh,
Hyderabad & others.

.....Respondents

::O R D E R ::

Counsel for the Petitioners : Shri P. Sri Raghuram

Counsel for Respondent Nos.1 and 6 : Government Pleader for Panchayat Raj

Counsel for Respondent No.2 to 5 : Shri V.V. Prabhakara Rao

Counsel for Respondent No.7 : Government Pleader for Social Welfare

Counsel for Respondent No.8 : Shri K.G. Kannabhiran

Dated: 03.08.2006

Per G.S. SINGHVI, CJ

Whether in exercise of the power conferred upon it under Article 226 of the Constitution of India, the High Court can, notwithstanding the bar contained in Article 243-O of the Constitution, entertain challenge to the reservation of the offices of Sarpanchas of Gram Panchayats in Mangapet Mandal, Warangal District in favour of the members of Scheduled Tribe and pass an order which will have the effect of stultifying the process of election, is the question which arises for determination in this petition filed by Shri Eppala China Venkateswarlu and 41 others for quashing order dated 24-6-2006 issued by Deputy District Election Authority and Revenue Divisional Officer, Mulugu, Warangal District (respondent No.4).

The petitioners are residents of various villages of Mangapet Mandal. All of them are non-tribals. They are enrolled as voters in the electoral rolls prepared under Section 11 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the 1994 Act') read with Rules 2 and 5 of the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000. They have questioned the legality of order dated 24-6-2006 issued by respondent No.4 reserving the offices of Sarpanchas in favour of Scheduled Tribes (Men and Women) by asserting that 18 Gram Panchayats (23 villages) viz., 1) Akinepally Mallaram, 2) Balannagudem, 3) Bauchampet, 4) Cherupally, 5) Domeda, 6)

Kamalapur,

7) Kathigudem, 8) Komatipally, 9) Mallur, 10) Narasapur (Boru), 11) Narasimha Sagar, 12) Ranmannakka peta, 13) Chunhupally, 14) Mangapet, 15) Rajupet, 16) Ramachandrunipet, 17) Thimmapet and 18) Wadagudem of Mangapet Mandal do not form part of Scheduled Areas declared by the President of India under sub-para (1) of Para 6 of the V Schedule to the Constitution. In support of their plea, the petitioners have relied on notification dated

21-4-1950 (published in Gazette (Extra-ordinary), Hyderabad Deccan dated 23-4-1950 AD) issued by the Government of Hyderabad under Section 5 of the Hyderabad Land Revenue Act No.8 of 1317 Fasli, notification dated 7-12-1950 issued by the President of India under sub-para (1) of Para 6 of the V Schedule, order dated 30-11-1973 passed by the Single Bench in Writ Petition No.1413 of 1973 (**Koya Brahmanandam and 137 others v. The Special Deputy Collector (Tribal Welfare), Warangal**), order dated 8-7-1974 passed by the Division Bench in Writ Appeal No.486 of 1974 (**The Special Deputy Collector (Tribal Welfare), Warangal v. Koya Brahmanandam and others)** and D.O. letter dated 5-12-2003 written by Director of Tribal Welfare, Government of Andhra Pradesh to District Collector, Warangal. The petitioners have also pleaded that reservation of all the offices of Sarpanchas of Gram Panchayats of 18 villages in favour of Scheduled Tribes is ultra vires to the provisions of Articles 14 and 19 (1)(a) of the Constitution and the 1994 Act.

In the counter-affidavit filed by Shri V. Nagi Reddy,

Secretary, Tribal Welfare Department, Government of Andhra Pradesh, it has been averred that the 23 villages of Mangapet Mandal have been declared as scheduled villages, as per notification issued by the President of India, which was published in Gazette No.90, dated 7-12-1950. Shri V. Nagi Reddy has further averred that at the time of issuance of notification dated 7-12-1950, the villages in question were shown in Palancha Taluq of Warangal District, but in the process of reorganization of districts, 204 villages in Palancha Taluq were included in Khammam District and 23 villages, which are subject matter of the writ petition, remained in Warangal District and the same were tagged to Mulugu Taluq. After formation of Mandals, these villages were included in Mangapet Mandal and the same form part of the Scheduled Areas. For the sake of convenience, paragraphs 2, 4 and 5 of the counter-affidavit of Shri V. Nagi Reddy are reproduced below:

> "2. In reply to para No.2 of the affidavit: It is submitted that in pursuance of the orders of the Government in G.O.Ms. No.220, Panchayat Raj Rural Development, Election and Rules Department, dt.25-5-2006, wherein the Govt., issued certain guidelines for reservation of seats in offices of Sarpanchas/Grampanchayats/MPP's and ZPs. In pursuance of the said notification the RDO, Mulugu, who is the ex-officio of Dist., Dy., Election Authority, sought certain clarification from the District Collector, Warangal, with regard to the application of the orders of the Government to various villages situated in Mangapet, Bhupalpally, Eturnagaram and Tadvai mandals of Warangal District. In pursuance of the said clarifications sought by the RDO, on 16-6-2006, the Dist., Collector, as per her

Proc. Rc.No.E5/3084/2006, Dt: 17-6-2006, informed that the villages of various mandals of Mangapet, Bhupalpally, Eturnagaram, which have been declared as scheduled villages, insofar as Mangapet mandal is concerned, all the 23 villages in Mangapet mandal have been declared as scheduled villages as per the notification published in Gazette No.90, Dt: 17-12-1950 issued by President of India. In pursuance of the said proceedings of the District Collector, Warangal District, vide No.E5/3084/2006, Dt: 17-6-2006, the RDO, Mulugu, passed orders on 24-6-2006, reserving the offices of Sarpanchas of Grampanchayats in Mangapet Mandal to the members belongs to the ST/SC/BC and for women basing on the proportionate population in descending order and by rotation in respect of SC/ST women and for Backward Class. Insofar as reservation to the STs, about 12 villages have been reserved to men and women the remaining 6 villages have been reserved in favour of ST (Women).

4. In reply to para 4: It is to submit that there are 23 villages in Mangapet Mandal of Warangal District as per the reorganization of the mandals in the State. But the said 23 Revenue villages have made treated as 18 Gram Panchayats which were stated in this affidavit is correct. But the other contentions of the writ petition as that these villages were not declared as Scheduled villages by the President of India, under Sub-Para (1) of Para 6 of the (V) Schedule is not correct. With regard to the other contention that this Hon'ble Court passed orders earlier on 30-11-73, in WRIT PETITION No.1413/1973, stating that 14 villages out of 23 of erstwhile Mulugu Taluq of Warangal District, setting aside show cause notice issued to the land owners in 14 villages by the Spl. Dy. Collector, Warangal, on the grounds that these villages of erstwhile Mulugu (T) were not notified by the President is not correct. In fact this Hon'ble Court passed orders on 30-11-1973, while setting aside the show cause notices issued by the Special

Dy., Collector, Warangal, on the ground that, the 14 out of 23 villages were not included in the Mulugu Taluq of Warangal District at the time issuing notification by the President of India, and therefore as these villages were not in the Mulugu Taluq at the time, therefore the action of the Spl., Dy., Collector, Warangal in issuing show cause notices to various land owners of the 14 villages in Mulugu Taluq is bad as these villages were not declared as scheduled area by including Mulugu Taluq at the time of issuing notification.

It is true that while issuing notification by the President of India on 7-12-1950, certain villages in Mulugu (T) were declared as scheduled villages, i.e., out of 218 villages have been declared as schedule villages. Like that out of 227 villages in Palvancha (T) have been declared as schedule villages, the villages in question have been shown in the Palvancha (T) of Warangal District, at the time of issuing the notification. Subsequently due to reorganization of the Districts 204 villages in Palvancha (T) have been included to Khammam District, including Palvancha as well as Samsthan Palvancha. 23 villages of the Palvancha Taluq of Warangal District (i.e., the subject matter of the villages) have been remained in the Warangal District and they were tagged to the Mulugu (T), thereafter while formation of mandals, these 23 villages have been included in the Mangapet mandal. It is not out of place to mention that there are other mandals in the Mulugu (T) which were declared as scheduled areas and the names of these mandals as Venkatapur, Eturunagarm, TAdvai, Govindaraopet and Mulugu. It is important to note that in order to decide whether any village/area as scheduled area, the authorities have to look into the notification issued by the President of India, it is immaterial whether any such area/village has been tagged to any District/Mandal. The fact remain that the authorities have to strictly follow the Presidential Notification only but not

concerned with reorganization of the areas by the State or local Government. It is also submitted that as per Section 2 (a) of APSALT, Regultion 1959, defines “Agency tracts means”, and the same is as follows the AREA, in the Districts of East Godavari, West Godavari, Visakapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahabubnagar, from time to time as scheduled area declared by the President of India, under sub- paragaraph (1) of Para (6) of the V Schedule to the Constitution.

As per the said definition of the word Agency tracks, which specifies the area declared by the President of India, but not with regard to inclusion of any area/village in Taluq/Mandal or District. It is an admitted fact that all these 23 Revenue villages have been shown in the Palvancha (T) in Warangal District, at the time of issuing notification by the President of India. Therefore, as already submitted as above it is immaterial whether these areas/villages subsequently tagged to the Mangapet Mandal or Mulugu (T) and on fact granted that these villages cannot be declared as Non-Scheduled area. As such the orders passed in earlier writ petition is not in accordance with law and the same was passed without properly appreciating the important aspects while passing the order. Further the learned Single Judge has passed orders declaring that the then Special Dy., Collector, Warangal, has no jurisdiction to issue notices under rule 7 (2) of the regulation on the ground that the villages in question are not shown in the Mulugu (T) at the time of issuing notification by the President of India. it is nobody’s case that these villages were included in the Mulugu (T) in the notification Dt: 7-12-50, the issue is whether has to be considered that whether these villages have been declared as scheduled villages by the President of India while issuing Gazette notification or not.

5. In Reply to Para 5: It is submitted that the writ petition as have referred some of the proceedings of the District

Collector, WGL, Dt: 20-7-2000, 17-10-2000, 7-10-2000. But the copies of said proceedings have not filed along with writ petition. As such the writ petitioners failed to substantiate their pleading by filing those copies of the District Collector. As such the petitioners are put to strict proof of the same. With regard to the other contention that the then Director of Tribal Welfare, addressed letter Dt: 5-12-2003, to District Collector, stating that with a view to give a benefit to the STs of these 23 villages which was denied due to oversight on the part of the Govt., the national scheduled areas and scheduled Commission proposed to the Government of India to amend the LTR 1959. But the said propose turned down by the Government of India, in the meantime the State Government had submitted proposals to the Government of India for inclusion of these areas. In fact the said letter was addressed by the Director of Tribal Welfare, the earlier basing on the orders passed by this Hon'ble Court, in W.P.No.1430/73, Dt:30-11-73. But without appreciating the legal position with regard to the definition of Section 2 (a) of APSALTR 1959, the Director Tribal Welfare observed that for inclusion of these 23 villages in the schedule list basin on the orders passed on this Hon'ble Court. As already submitted the above and once again repeating that while passing the order this Hon'ble Court never declared the 23 villages as non-scheduled area but while passing the orders this Court only stated that these 23 villages new were not included in Mulugu (T), and therefore these villages were not shown as schedule villages in the Mulugu (T). But there is no in the order reference with regard to the inclusion of these villages in Palvancha (T) at the time of notification. As such the Director of Tribal Welfare, drawn inference basing on orders of this Hon'ble Court that these villages are not scheduled villages and without taking into consideration that once the President of India declares any village as schedule village, no Court or judgment cannot touch the

same. Insofar as the contention of the petitioners of the submitting the proposals by the Project Officer, concerned for issuance of clarification regarding to schedule areas of these villages and reminded in Rc.No.E5/6371/2000, Dt: 20-7-2000 and 17-10-2000 and
7-12-2000. But no response is received from Government. Hence, the clarification is issued basing on the early orders issued by the G.O.Ms.No.297, Dt: 28-12-1991, wherein it was mentioned that entire 23 villages of Mangapet Mandal of scheduled villages."

Petitioner No.1 has filed rejoinder affidavit reiterating the stand that in view of the judgment of the learned Single Judge in Writ Petition No.1413 of 1973, which was confirmed by the Division Bench, the villages in question cannot be treated as part of Scheduled Areas for the purpose of reservation of the offices of Sarpanchas.

During the pendency of the writ petition, the petitioners filed WPMP No.20129 of 2006 for placing on record copies of notifications dated 21-4-1950 and 7-12-1950. The same has been allowed by us by a separate order passed today.

Shri P. Sri Raghuram, learned counsel for the petitioners argued that notwithstanding the bar contained in Article 243-O, this Court can entertain writ petition filed under Article 226 because the power of judicial review vested in the High Court constitutes one of the basic structures of the Constitution and the same cannot be abridged, curtailed or taken away even by amending the Constitution. In support of this argument, Shri Raghuram relied on the judgments of the Supreme Court in

L. Chandra Kumar v. Union of India[1] and **Harnek Singh v.**

Charanjit Singh[2]. He submitted that acceptance of the prayer made by the petitioners would advance the cause of election and would not, in any manner, impede the pending elections. Learned counsel then argued that reservation of all the offices of Sarpanchas in favour of Scheduled Tribes has the effect of depriving the members of other castes of their right to choose candidates of their choice and, therefore, the Court may, without disturbing the process of election, direct respondent No.4 to issue fresh notification for reservation of the offices of Sarpanchas of 18 Gram Panchayats.

Learned Government Pleaders for Panchayat Raj and Social Welfare argued that reservation of the offices of Sarpanchas of Mangapet Mandal is in consonance with the notification issued by the President of India under sub-para (1) of Para 6 of the Vth Schedule of the Constitution and, therefore, the same cannot be nullified at the instance of the petitioners. Shri K.G. Kannabhiran, learned Senior Advocate appearing for the added respondent argued that the petitioners should be non-suited in view of the express bar contained in Article 243-O of the Constitution.

For the purpose of deciding whether the bar contained in Article 243-O operates against the power vested in the High Court under Article 226 of the Constitution of India to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them for the enforcement of any right conferred by Part III of the Constitution or for any other purpose, it will be useful to

notice the relevant constitutional and legal provisions.

On 26th day of January, 1950, the people of this country resolved to constitute India into a sovereign democratic republic and to secure to all its citizens:

> "JUSTICE, social, economic and political;
> LIBERTY of thought, expression, belief, faith and worship;
> EQUALITY of status and opportunity;
> and to promote among them all
> FRATERNITY assuring the dignity of the individual and the unity of the nation."

By Constitution (Forty-second Amendment) Act, 1976, the words "Sovereign, Socialist, Democratic Republic" were substituted for the words "sovereign Democratic Republic" and the words "unity and integrity of the Nation" was substituted for the words "unity of the Nation".

Part III of the Constitution contains various fundamental rights guaranteed to the citizens and other persons. Part IV enumerates the Directive Principles of State Policy. By virtue of Article 37, it has been declared that the provisions contained in Part IV are not enforceable by any Court, but the principles contained therein are fundamental in the governance of the country and it is the duty of the State to apply the same in making laws. Article 40, which forms part of the Directive Principles of State Policy, ordains the States to take steps to organize village panchayats and endow them with powers and authority necessary to enable them to function as units of self-government. To achieve this goal, the Legislature of the State of Andhra Pradesh enacted various laws including the Andhra

Pradesh Gram Panchayat Act, 1964 and Andhra Pradesh Mandal Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986. Likewise, the Legislatures of all other States enacted similar legislations. The object of these legislations was to decentralize the governance at the grass-root level and make the panchayats as units of self-government. However, due to lack of political will and tardy implementation of the provisions contained in these legislations by a rather unsympathetic bureaucracy resulted in total frustration of the object set out in Article 40 of the Constitution. With a view to remedy the situation, the Parliament enacted Constitution (Seventy-third Amendment) Act, 1992 and Constitution (Seventy-fourth Amendment) Act, 1992 whereby Parts IX and IX-A were added to the Constitution. With these amendments, Panchayats and Municipal Bodies have been declared as units of self-government. The provisions contained in these two parts are of far reaching significance. The same are intended to make the Panchayats and Municipal Bodies fully autonomous partners in the governance of the nation.

Article 243 (d) defines the term “Panchayat”, as an institution of self-government constituted under Article 243-B for the rural areas. Article 243-B provides for constitution of Panchayats. Article 243-C relates to composition of Panchayats; Article 243-D regulates reservation of seats for Scheduled Castes and Scheduled Tribes. Article 243-E prescribes duration of Panchayats. Article 243-G enumerates power, authority and responsibilities of Panchayats. Article 243-H contemplates that

the Legislature of the State may, by law, authorize a Panchayat to levy, collect and appropriate taxes, duties, tolls and fee. It also postulates making of a provision for grant-in-aid to the Panchayats and constitution of panchayat fund. Article 243-I provides for constitution of Finance Commission to review financial position of the Panchayats and to make recommendations to the government on various matters specified in that article. Article 243-K regulates elections to the Panchayats. Article 243-M declares that provisions of Part IX shall not apply to the Scheduled Areas. Clause (4) thereof empowers the Legislature of a State to enact law for extending the provisions of Part IX to the Scheduled Areas and Tribal Areas. Article 243-O which begins with a non-obstante clause contains a bar to the Court's interference in electoral matters.

To bring the existing legislations in tune with the provisions contained in Part IX of the Constitution, the Andhra Pradesh State Legislature enacted the 1994 Act and repealed the Andhra Pradesh Gram Panchayats Act, 1964, the Andhra Pradesh Mandal Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhi-vrudhi Sameeksha Mandals Act, 1986 and the Andhra Pradesh Local Bodies Electoral Reforms Act, 1989. Part II of the 1994 Act contains provisions relating to constitution, administration and control of Gram Panchayats. Section 8 lays down that all the members of Gram Panchayat shall be elected by the registered voters in the ward by the method of secret ballot. Section 9 provides for reservation of seats for Scheduled Castes, Scheduled Tribes, Backward Classes and Women.

Section 11 prescribes the procedure for preparation and publication of electoral roll for a Gram Panchayat. Sections 13 and 14 regulate the term of office of members and Sarpanchas and Section 15 provides for reservation of office of Sarpanch. Part V of the 1994 Act contains provisions relating to constitution of State Election Commission, conduct of elections and election offences. Section 233 contains a prohibition against challenge to elections except by way of an election petition. Part VI-A which was added by Andhra Pradesh Act No.7 of 1998 contains special provisions relating to the Panchayats, Mandal Parishads and Zilla Parishads located in the Scheduled Areas. Section 268 empowers the government to make rules to carry out all or any of the purposes of the Act. In exercise of the powers vested in it under Section 233 read with sub-section (1) of Section 268, the Government of Andhra Pradesh framed the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short, 'the 1995 Rules'). Rule 2 of these Rules contains a reiteration to the bar against challenge to the election held under the 1994 Act except by an election petition.

Articles 243(d), 243-D 243-E, 243-K (1), 243-M (1) and (4), Article 243-O and Article 329 of the Constitution and Sections 9, 13 (1), 14 (3), 15, 204, 233, 242-A and 242-D of the 1994 Act, which have bearing on the decision of this petition, read as under:

> **Constitution of India**
>
> **243(d)** "Panchayat" means an institution (by whatever name called) of self-government constituted under Article 243-B, for the rural areas.

243-D. Reservation of seats:

(1) Seats shall be reserved for-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

(2) Not less than one-third of the total number of seats reserved under Cl. (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State.

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at the each level.

(5) The reservation of seats under Cls. (1) and (2) and the reservation of offices of Chairpersons (other than the

reservation for women) under Cl. (4) shall cease to have effect on the expiration of the period specified in Art.334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

243-E. Duration of Panchayats etc:

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Cl. (1).

(3) An election to constitute a Panchayat shall be completed- (a) before the expiry of its duration specified in Cl. (1) : (b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under Cl. (1) had it not been so dissolved.

243-K. Elections of the Panchayats:

1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all

elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.

...

243-M. Part not to apply to certain areas:

(1) Nothing in this Part shall apply to the Scheduled Areas referred to in Cl. (1), and the Tribal Areas referred to in Cl. (2), of Art.244.

(2) …

(3) …

(4) Notwithstanding anything in this Constitution,-

(a) the Legislature of a State referred to in sub-clause (a) of Cl. (2) may, by law, extend this Part to that State, except the areas, if any, referred to in Cl. (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the Tribal Areas referred to in Cl. (1) subject to such exceptions and modifications as may be specified in such law, and no such law shall be deemed to be an amendment of this Constitution for the purposes of Art.368.

243-O. Bar to interference by Courts in electoral matters:

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Art.243K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority

and in such manner as is provided for by or under any law made by the Legislature of a State.

329. Bar to interference by courts in electoral matters: Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Art.327 or Art.328, shall not be called in question in any court:

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election-petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Andhra Pradesh Panchayat Raj Act, 1994

S. 9. Reservation of seats of members of Gram Panchayat:

(1) In every Gram Panchayat, out of the total strength of elected members determined under Section 7, the Commissioner shall, subject to such rules as may be prescribed, by notification, reserve --

(a) such number of seats to the Scheduled Castes and Scheduled Tribes as may be determined by him, subject to the condition that the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election to the Gram Panchayat, as the population of the Scheduled Castes, or as the case may be, Scheduled Tribes in that village bears to the total population of that village; and such seats may be allotted by rotation to different wards in a Gram Panchayat;

(b) [x x x]

(c) not less than one third of the total number of seats reserved under Clause (a) and sub section (1A) for women belonging to the Scheduled Castes, Scheduled Tribes or as the case may be, the Backward Classes;

(d) not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes) of the total number of seats to be filled by direct election to every Gram Panchayat shall be reserved for women and such seats may be allotted by rotation to different wards in a Gram Panchayat.

(1-A) In addition to the reservation of seats under sub section (1), there shall be reserved for the Backward Classes such a number of seats as may be allocated to them in each Gram Panchayat in the manner prescribed; so however that the number of offices of members of Gram Panchayats in the State reserved for Backward Classes shall not be less than thirty four percent of the total number of offices of the members of Gram Panchayats in the StateThe number of seats allocated to each Gram Panchayat shall be allotted by rotation to different wards in the Gram Panchayat:

Provided that it shall be competent for the Government to make special provision with regard to the manner and quantum of seats to be reserved for Backward Classes in the Gram Panchayats situated in the Scheduled areas, by rules made in this behalf.

(2) Nothing in sub sections (1) and (1-A) shall be deemed to prevent women and Members of the Scheduled Castes, Scheduled Tribes or Backward Classes from standing for election to the non reserved seats in the Gram Panchayat.

S.13. Term of office of members:

(1) Save as otherwise provided in this Act the term of office of members elected at ordinary elections shall be five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary elections.

…

S.14. Election and term of office of Sarpanch:

…

(3) Save as otherwise expressly provided in, or prescribed under this Act, the term of office of the Sarpanch who is elected at an ordinary election shall be five years from the date appointed by the Election Authority for the first meeting of the Gram Panchayat after the ordinary election.

…

S. 15. Reservation of office of Sarpanch:

(1) Out of total number of offices of Sarpanch in the State, the Commissioner shall, subject to such rules as may be prescribed, by notification reserve,

(a) such number of offices to the Scheduled Castes and Scheduled Tribes as may be determined by him, subject to the conditions that the number of offices so reserved shall bear, as nearly as may be, the same proportion to the total number of offices to be filled in the State as the population of the Scheduled Castes or as the case may be Scheduled Tribes in the State bears to the total population of the State; and such seats may be allotted by rotation to different Gram Panchayats in the State;

(b) [x x x x x]

(c) not less than one third of the total number of offices reserved under Clause (a) and sub section (2) for women belonging to the Scheduled Castes, Scheduled Tribes, or as the case may be, Backward

Classes; and

(d) not less than one third (including the number of offices reserved for women belonging to the Scheduled Castes, Scheduled Tribes and the Backward Classes) of the total number of offices to be filled in the State; for women; and such offices may be allotted by rotation to different Gram Panchayats in the State.

(2) In addition to the reservation of offices of Sarpanch under sub section (1), there shall be reserved for the Backward Classes such number of Offices of Sarpanch as may be allocated to them in each mandal in the manner prescribed; so however, that the number of Offices of Sarpanchas in the State reserved for Backward Classes shall not be less than thirty four percent of the total number of offices of Sarpanchas of Gram Panchayats in the State. The number of offices of Sarpanchas allocated for reservation to each Mandal shall be allotted by rotation to different Gram Panchayats in the Mandal:

Provided that it shall be competent for the Government to make special provision with regard to the manner and quantum of seats to be reserved for Backward Classes in the Gram Panchayats situated in the Scheduled areas, by rules made in this behalf.

S. 204. Injunctions not to be granted in election proceedings:

Notwithstanding anything in the Code of Civil Procedure, 1908 (Central Act 5 of 1908), or in any other law for the time being in force, no court shall grant any permanent or temporary injunction or make any interim order restraining any proceeding which is being or about to be taken under this Act for the preparation or publication of any electoral roll or for the conduct of any election.

S. 233. Election petitions:

No election held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf.

S. 242-A. Application of this Part:

(1) The provisions of this part shall apply to the Gram Panchayats, Mandal Parishads and Zilla Parishads constituted in the Scheduled Areas in the State.

(2) The provisions of this Part shall prevail over anything inconsistent therewith elsewhere in this Act.

S. 242-D. Reservation of seats of members of Gram Panchayat and Mandal Parishad and Offices of Sarpanchas of Gram Panchayats and Presidents of Mandal Parishads:

The reservation of seats in the Scheduled Areas to every Gram Panchayat and Mandal Parishad shall be in proportion to the population of the communities in that Gram Panchayat or the Mandal Parishad as the case may be :

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Sarpanchas of Gram Panchayats and Presidents of Mandal Parishads shall be reserved for the Scheduled Tribes.

Before proceeding further, we consider it proper to observe that even though Sections 204 and 233 of the 1994 Act and Rule 2 of the 1995 Rules contains a bar against challenge to the election except by an election petition and there is a specific prohibition against the grant of injunction, the same does not in any manner impinge on the High Court's power to issue

appropriate directions, orders or writs under Article 226 of the Constitution.

However, the moot question which needs determination is – whether the bar to Court's interference in electoral matters contained in Article 243-O operates qua the High Court's power of judicial review under Article 226. A reading of the plain language of Article 243-O makes it clear that the ambit and reach of the bar contained therein is very wide and pervasive. The non-obstante clause contained in that article excludes all other provisions of the Constitution, which necessarily include Article 226. It lays down that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K shall not be called in question in any Court. It also declares that no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as provided for by or under any law made by the legislature of a State. In other words, the power of the judicial review conferred upon the High Courts under Article 226 of the Constitution of India is not available to an aggrieved person until after the adjudication of the election dispute by an authority constituted under the law enacted by the Legislature of the concerned State. To put it differently, any challenge to the election or any election dispute can be adjudicated in the first instance only by an authority constituted by or under any law made by the Legislature of a State and not otherwise. The High Court can entertain writ petition against an adjudicatory order

made by the Tribunal etc. constituted under the State Legislation, but cannot entertain a petition directly filed under Article 226 of the Constitution questioning the law relating to delimitation of constituencies or the allotment of seats or election to any panchayat. The reason why the Parliament did not want any judicial intervention in the process of election is clearly discernible from the scheme of various provisions contained in Part IX. While making the Panchayats as units of self-government, the Parliament also ensured that they are controlled by democratically elected bodies having a fixed tenure of five years. If the word “shall” appearing in clause (1) of Article 243-E is read in conjunction with the expression “no longer” used in that clause and Sections 13 (1) and 14 (3) of the 1994 Act, it becomes clear that the elected body of panchayat cannot continue in office for a period of more than five years. This interpretation is amply supported by the mandatory nature of the provision contained in clause (3) of Article 243-E, which requires that election to constitute a panchayat shall be completed before the expiry of its duration of five years. These provisions are also reflective of the legislative intendment that the electorates of the panchayats should be able to exercise their franchise to choose the candidates of their choice at the end of five years period, if not before. While enacting clause (3) of
Article 243-E, which, as mentioned above, mandates that election to constitute a panchayat shall be completed before expiry of its duration of five years, the Parliament must have taken into consideration that the provisions contained in various statutes for

appointment of administrative and executive officers to manage the affairs of the local bodies in urban as well as rural areas at the end of the term of the elected bodies and the fact that these provisions are generally misused and efforts are made by the interested parties and persons to deprive the people of their right to choose their representatives. The Parliament must also have taken note of the fact that process of election to various bodies including panchayats, which are intended to be units of self-government, is frustrated by judicial interventions at various stages like delimitation of constituencies, issuance of notification for holding election, preparation and publication of the electoral rolls, filing of nomination papers, actual poll, counting of votes and declaration of result. Therefore, with a view to ensure that the elections to the panchayats, which have been declared as units of self-government, are held without interruption on account of intermediate/ interlocutory judicial interventions, the Parliament designedly enacted Article 243-O and introduced a complete bar to Courts' interference in the electoral matters and also incorporated non-obstante clause which operates qua all other provisions contained in the Constitution. If the Parliament intended to exclude Article 226 from the purview of the non-obstante clause contained in Article 243-O, then the language of that Article would have been like that of Articles 116, 120, 128, 133 (2), (3), 136, 145, 170(1), 196, 197 (3), 204(3), 206, 210, 224-A, 226(1), 231(1), 239(2), 243-M(1), 243-N, 243-ZC, 246(1) and (2), 247, 249(1), 250(1), 253, 266(1), 271, 276(1), 301, 303(1), 304, 312(1), 317(1), 330(3), 331, 332(B), 333, 334,

343(1), 345, 348 (1), (2), 376 (1) and 378-A. The non-obstante clauses contained in these Articles have limited operation. For example, non-obstante clause contained in Article 116 operates against the provisions contained in Chapter II of
Part IV. The non-obstante clause contained in Article 120 operates against the provisions contained in Part XVII. Similar is the ambit and scope of the non-obstante clauses contained in the remaining articles of this family. As against this, the non-obstante clauses contained in Articles 243-O, 243-ZG, 244-A, 258 (1), 258-A, 262 (2), 329, 363, 363-A, 368, 369, 371 (2), 371-A (1), (2), 371-B, 371-C, 371-F, 371-H and 371-I are very wide. The expression used in these articles is "notwithstanding anything contained in this Constitution". This means that the provisions contained therein operate against all other articles of the Constitution. If the non-obstante clause contained in Article 243-O and similar clause contained in Article 243-ZG is interpreted in the backdrop of the fact that the Parliament did not want intermediary/interlocutory judicial interventions in the process of election which constitutes an integral part of the democratic set up of our country, it becomes clear that the High Court's power of judicial review under Article 226 of the Constitution is postponed in the matters involving challenge to delimitation of constituencies or allotment of seats or election to panchayats until after completion of the process of election and adjudication of election dispute by an adjudicatory forum created under the law enacted by the Legislature of the State.

At this stage, we deem it necessary to clarify that the

provisions contained in Articles 243-O, 243-ZG and Article 329 are not akin to Section 28 of the Central Administrative Tribunal Act, 1985 which was enacted by the Parliament under Article 323-A and which, in its unamended form had the effect of excluding the jurisdiction of all the Courts, including the Supreme Court. Later on, Section 28 was amended and the jurisdiction of the Supreme Court to entertain appeals against the orders passed by the Tribunals was restored. However, exclusion of the High Court's power of judicial review qua orders passed by the Tribunals was maintained. The amended Section 28 was upheld by the Constitution Bench in **S.P. Sampath Kumar v. Union of India**[3], but was read down by the Larger Bench of seven Judges in **L.Chandra Kumar v. Union of India** (supra). The propositions laid down in **L. Chandra Kumar v. Union of India** (supra) read as under:

> "1) The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. Therefore, the power of judicial review over legislative action vested in the High Court under Article 226 and in Supreme Court under Art. 32 is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

2) The power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

3) Though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental - as opposed to a substitutional - role in this respect. Such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Art. 32.

4) If the power under Art. 32 which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other Court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Art. 226 of the Constitution. So long as the jurisdiction of the High Courts under Arts. 226/227 and that of Supreme Court under Art. 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Art. 323-B of the Constitution. It is to be remembered that, apart from the authorisation that flows from Arts. 323A and 323B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List 1 and to the State Legislatures under Entry 65 of List

II, Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose."

We may now notice the judgments of the Supreme Court in which Articles 329, 243-O and 243-ZG have been interpreted. In **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency**[4], a Constitution Bench of the Supreme Court considered the ambit and reach of Article 329 (b) which is pari materia to Article 243-O (b) and Article 243-ZG. In that case, the appellant was one of the persons who had filed nomination paper to Madras Legislative Assembly from Namakkal Constituency of Salem District. The Returning Officer rejected his nomination paper. The appellant moved the High Court by filing petition under Article 226 of the Constitution of India and prayed for quashing of the order of the Returning Officer and for issue of a mandamus for inclusion of his name in the list of valid nominations. The High Court dismissed the writ petition by observing that it did not have the jurisdiction to interfere with the order of the Returning Officer. On appeal, the Supreme Court interpreted the word 'election' appearing in Part XV of the Constitution and held:

> "The word 'election' has been used in Part XV of the Constitution in the right sense, that is to say, to connote the entire procedure to be gone through to return the candidate to the legislature. The use of the expression 'conduct of elections' in Article 324 specifically points to the wide meaning and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(b). The term 'election' may be

taken to embrace the whole procedure whereby an elected member is returned, whether or not it be found necessary to take a poll. It is not used in narrow sense."

(Emphasis supplied)

The Supreme Court then considered the question whether the High Court can interfere with the on-going process of election and answered the same in negative. Their Lordships of the Supreme Court referred to the judgments of Madras High Court in **Srinivasulu v. Kuppuswami**[5] and of Lahore High Court in **Satnarayan v. Hanuman Prasad**[6] and approved the ratio of those decisions by making the following observations:

"The law of election in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court. Under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may raised under the law to call the election in question could be urged. It follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other

stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art.329 (b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.

The Representation of the People Act is a self-contained enactment so far as elections are concerned, which means that whenever we have to ascertain the true position in regard to any matter connected with elections, we have only to look at the Act and the rules made thereunder. Section 80, which is drafted in almost the same language as Article 329 (b), provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of this Part." Section 80, along with Ss.100, 105 and 170 are the main provisions regarding election matters being judicially dealt with, and there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage."

(underlining is ours)

In **Durga Shankar Mehta v. Raghuraj Singh**[7], another Constitution Bench of the Supreme Court dealt with the scope of Article 136 vis-à-vis Article 329 (b) and held that even though the non-obstante clause with which Article 329 of the Constitution begins debars the Supreme Court, as it debars any other court in the land, to entertain a suit or a proceeding calling in question any election to the Parliament or the State Legislature and the

Election Tribunal alone can decide such dispute, the power of the Supreme Court to interfere by way of special leave can always be exercised. In that case, it was argued on behalf of the respondent that the Supreme Court cannot hear an appeal against an order made by the Election Tribunal constituted under the Representation of the People Act, 1951. While repelling this argument, the Supreme Court observed:

> "We agree with the learned counsel that the right of seeking election and sitting in Parliament or in a State Legislature is a creature of the Constitution and when the Constitution provides a special remedy for enforcing that right, no other remedy by ordinary action in a court of law is available to a person in regard to election disputes. The jurisdiction with which the Election Tribunal is endowed is undoubtedly a special jurisdiction; but once it is held that it is a judicial Tribunal empowered and obliged to deal judicially with disputes arising out of or in connection with election, the overriding power of this court to grant special leave, in proper cases, would certainly be attracted and this power cannot be excluded by any Parliamentary legislation.
>
> The 'non-obstante' clause with which Article 329 of the Constitution begins and upon which the respondent's counsel lays so much stress debars us, as it debars any other court in the land, to entertain a suit or a proceeding calling in question any election to the Parliament or the State Legislature. It is the Election Tribunal alone that can decide such disputes, and the proceeding has to be initiated by an election petition and in such manner as may be provided by a statute. But once that Tribunal has made any determination of adjudication on the matter, the powers of this court to interfere by way of special leave can always be exercised."
>
> (underlining is ours)

I n **Mohinder Singh Gill v. Chief Election Commissioner**[8], another Constitution Bench considered the ambit of the bar contained in Article 329 (b) of the Constitution. Speaking for himself, M.H. Beg, Chief Justice and P.N.Bhagwati, J, Justice V.R. Krishna Iyer held:

> "The plenary bar of Art. 329 (b) rests on two principles; (1) The peremptory urgency of prompt engineering of the whole election process without intermediate interruptions by way of legal proceedings challenging the steps and stages in between the commencement and the conclusion. (2) The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes other form, the right and remedy being creatures of statutes and controlled by the Constitution. **Durga Shanker Mehta (1955 (1) SCR 267 : (AIR 1954 SC 520))** has affirmed this position and supplemented it by holding that, once the Election Tribunal has decided, the prohibition is extinguished and the Supreme Court's over all power to interfere under Art. 136 springs into action. In **Hari Vishnu (1955-1 SCR 1104) : (AIR 1955 SC 233)** this Court upheld the rule in **Ponnuswami (AIR 1952 SC 64)** excluding any proceedings, including one under Art. 226, during the on-going process of election, understood in the comprehensive sense of notification down to declaration. Beyond the declaration comes the election petition, but beyond the decision of the Tribunal the ban of Art. 329 (b) does not bind.
>
> If 'election' bears the larger connotation, if 'calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting, the conclusion is irresistible, even though the argument contra may have emotional impact

and ingenious appeal, that the catch-all jurisdiction under Art, 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed poll process and to complete it through the salvationary effort of a re-poll. Whether, in fact or law, the order is validly made within his powers of violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or in many polling stations, for good reasons, is lawful. This shows that re-poll in many or all segments, all pervasive or isolated, can be lawful. We are not considering whether the act was bad for other reasons. We are concerned only to say that if the regular poll, for some reasons, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. The deliverance of Dunkirk is part of the strategy of counter-attack. Wise or valid, is another matter.

On the assumption, but leaving the question of the validity of the direction for re-poll open for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step un 'election, and is therefore barred by Art. 326 (b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case."

In paragraph 91, Krishna Iyer, J recorded the following conclusions:

"1.

(a). Article 329 (b) is a blanket ban on litigative

challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

2.

(a) The Constitution contemplates a fee and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection, with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Art. 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be a required of it as fairplay-in-action in a most important area of the constitutional order, viz., elections. Fairness does import an obligation to see that no wrong-doer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but

in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication.

3. The conspectus of provisions bearing on the subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post election stage and procedure as predicated in Article 329 (b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other things necessary for fulfillment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law."

In a separate judgment, P.K. Goswami, J speaking for himself and P.N. Shinghal, J referred to **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency** (supra) and Article 329 (b) and held:

"It is undisputed that an election can be challenged only under the provisions of the Act. Indeed Section 80 of the Act provides that "no election shall be called in question except by an election petition presented in accordance with the provisions of" Part VI of the Act. We find that that all the substantial reliefs which the appellants seek in the writ application, including the declaration of the election to be void and the declaration of appellant No. 1 to be duly elected, can be claimed in the election petition. It will be within the power of the High Court, as the election court, to give all appropriate reliefs to do complete justice between the parties. In doing so it will be open to the High Court to pass any ancillary or consequential order to

enable it to grant the necessary relief provided under the Act. The writ application is therefore barred under Art. 329 (b) of the Constitution and the High Court rightly dismissed it on that ground."

In **Inderjit Barua v. Election Commission of India**[9], the Supreme Court held that Article 329 (b) does not cease to operate merely because the elections are challenged as a whole and not individually by filing writ petition on the ground that the elections held on the basis of unrevised and invalid electoral roll.

In **Election Commission of India v. Shivaji**[10], the Supreme Court set aside an order made by Aurangabad Bench of Bombay High Court which had stayed the process of election and held:

> "The disputes regarding the elections have to be settled in accordance with the provisions contained in Part VI of the Act. S. 80 of the Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act. The expression 'election' is defined by S. 2(d) of the Act as an election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State other than the State of Jammu and Kashmir. Thus a dispute regarding election to the Legislative Council of a State can be raised only under the provisions contained in Part VI of the Act. Section 80A of the Act provides that the Court having jurisdiction to try an election petition shall be the High Court. An election petition has to be presented in accordance with S. 81 of the Act. In view of the non obstante clause contained in Art. 329 of the Constitution the power of the High Court to entertain a petition questioning an election on whatever grounds under Art. 226 of the Constitution is taken away.

The word 'election' has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Art. 329(b) occurs. In **N. P. Ponnuswami v. Returning Officer, Namakkal Constituency, 1952 SCR 218: (AIR 1952 SC 64)** this Court held that, the scheme of Part XV of the Constitution and the Act seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any court. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being any dispute relating to the pre-polling stage. In the above decision this Court ruled that having regard to the important functions which the legislatures have to perform in democratic countries, it had always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections were over so that the election proceedings might not be unduly retarded or protracted. Hence even if there was any ground relating to the non-compliance with the provisions of the Act and the Constitution on which the validity of any election process could be questioned, the person interested in questioning the elections has to wait till the election is over and institute a petition in accordance with S. 81 of the Act

calling in question the election of the successful candidate within forty-five days from the date of election of the returned candidate but not earlier than the date of election."

(underlining is ours)

In **State of U.P. v. Pradhan Sangh Kshetra Samiti**[11], the Supreme Court considered the nature of non-obstante clause contained in Article 243-O and observed:

"What is more objectionable in the approach of the High Court is that although Clause (a) of Article 243 (O) of the Constitution enacts a bar on the interference by the Court in electoral matters including that questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243 K and the election to any Panchayat, the High Court has gone into the question of validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in **Meghraj Kothari v. Delimitation Commission, (1967) 1 SCR 400: AIR 1967 SC 669**. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Schedule Castes. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Section 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any Court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the results would be that

any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10(4) of that Act puts such an order in the same position as a law made by Parliament itself which could be made by it under Article 327. If we read Articles 243-C,
243-K and 243-O in place of Article 327 and Sections 2 (kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the Panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31-9-1994."

(underlining is ours)

In **Boddula Krishnaiah v. State Election Commissioner**[12], the Supreme Court considered various interlocutory orders passed by this Court, during the ongoing process of election relating to a Gram Panchayat in Nalgonda District and held:

> "Thus, there is a constitutional bar on interference with the election process except by an election petition presented to an Election Tribunal constituted under the law enacted by the competent legislature."

The Supreme Court then referred to the judgments of **N. P. Ponnuswami v. Returning Officer, Nammakkal Constituency** (supra), **Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman**[13] , **State of U.P. v. Pradhan Sangh Kshetra Samiti** (supra) and observed:

> "Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented to exercise their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal."

In **Anugrah Narayan Singh v. State of U.P.**[14]**,** the Supreme Court considered the non-obstante clause contained in Article 243-ZG, which is pari materia to Articles 243-O and 329 and held as under:

> "In terms of Article 243-ZG of the Constitution there is complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election. The bar imposed by Article 243-ZG is twofold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well under way, the court should not intervene to stop the election process. If this is allowed to be done, no election

will ever take place because someone or the other will always find some excuse to move the court and stall the elections."

(Emphasis added)

In **Jaspal Singh Arora v. State of M.P.**[15], the Supreme Court set aside the order of the Madhya Pradesh High Court which had allowed the writ petition and quashed the election of the appellant. The Supreme Court noted that the writ petition filed by the defeated candidate had been dismissed by the High Court on the ground of availability of statutory remedy under the Madhya Pradesh Municipalities Act, 1961, but the second petition filed by the respondent was allowed by the High Court. The Supreme Court set aside the order of the High Court on the ground that the bar contained in Article 243-ZG was overlooked. The relevant extract of the rather short order of the Supreme Court which has direct bearing on the case before us is reproduced below:

"These appeals must be allowed on a short ground. In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the

fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court."

In **Election Commission of India v. Ashok Kumar**[16], a three Judges Bench of the Supreme Court considered the question whether the High Court was justified on staying the process of election initiated by the Election Commission for constituting 13th Lok Sabha. The three Judges Bench referred to the judgment of **M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd.**[17] in which the Supreme Court held that jurisdiction of the High Courts is a part of sovereign power of the State and unless expressly or impliedly barred and subject to appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction. The three Judges Bench noted that power of judicial review is a basic structure of the Constitution, referred to the judgments of the Constitution Benches in **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency** (supra), **Mohinder Singh Gill v. Chief Election Commissioner** (supra), **Lakshmi Charan Sen v. A.K.M.Hassan Uzzaman** (supra), **Election Commission of India v. State of Haryana**[18], **Digvijay Mote v. Union of India**[19], **Anugrah Narayan Singh v. State of U.P.** (supra), **C. Subrahmanyam v. K. Ramanjaneyullu**[20] and held:

> "The non obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election **{see para 25 of Mohinder Singh Gill's case (AIR 1978 SC 851)}**. The

provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the Courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

The founding fathers of the Constitution have consciously employed use of the words 'no election shall be called in question' in the body of Section 329(b) and these words provide the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court 'calls in question an election' the bar of Article 329(b) is attracted. Else it is not."

In paragraph 32 of the judgment, the Supreme Court culled out the following propositions:

"(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in

furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329 (b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

In paragraph 33, their Lordships clarified that afore-stated

conclusions should not be construed as summary of the judgment but should be read along with earlier part of the judgment containing reasons on which the aforementioned conclusions are based.

In **Manda Jagannath v. K.S.Rathnam**[21], the Supreme Court considered the question whether an order passed by the Returning Officer rejecting Form-B filled by a candidate and refusal to allot party symbol to him could be interfered in a writ petition. The Supreme Court referred to the non-obstante clause contained in Article 329 (b) and held:

> "(i) Under Art.329 (b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the Houses of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. The Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such election hence, under Art. 329 (b) no forum other than such forum constituted under the R.P.Act can entertain a complaint against any election.
>
> (ii) Where the returning officer while scrutinizing the nomination paper of the petitioner found that Form B which is required to be filled by the candidate for claiming party symbol was incompletely filled and vital clauses in the Form B were left blank and therefore rejected Form B of the petitioner and refused to allot him party symbol, the order could not be interfered with by High Court in exercise of writ jurisdiction.
>
> (iii) There are special situations wherein writ jurisdiction can be exercised but special situation means errors having

the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration. If by an erroneous order conduct of the election is not hindered then the courts under Art.226 of the Constitution should not interfere with the orders of the Returning Officers remedy for which lies in an election petition only. In the present case by not allotting a symbol claimed by petitioner the Returning Officer has not stalled or stopped the progress of the election. The petitioner has been treated as an independent candidate and he is permitted to contest with a symbol assigned to him as an independent candidate, and consequently there is no question of stalling the election. His grievance as to such non-allotment of the symbol will have to be agitated in an election petition."

In **Harnek Singh v. Charanjit Singh** (supra), the Supreme Court considered the question whether the High Court could entertain a petition filed by the respondent questioning the power of the Returning Officer to fix the date of adjourned meeting to elect Chairman of Panchayat Samithi in accordance with the Punjab Panchayat Election Rules, 1994. While allowing the appeal, the Supreme Court observed as under:

"It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view the fact that an efficacious alternative remedy is available therefor. (See **Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd.**[22])

Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial

review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question."

A Division Bench of Gujarat High Court in **Kanchanbhai v. Maneklal**[23], interpreted Section 24 of the Gujarat Panchayats Act, 1962 and Rules 14 (2) and 14 (8) of the Gujarat District Panchayats Election Rules, 1962, which are pari materia to Section 233 of the 1994 Act and Rule 12 of the 1995 Rules. Speaking for the Bench, P.N. Bhagawati, J (as His Lordship then was) framed the following question of law:

> "Now what are the questions which can be raised by an aggrieved person in an application under section 24? The section empowers an aggrieved person and any person qualified to vote at an election would be an aggrieved person-to bring the validity of the election into question before the Civil Judge, Junior Division, or the Civil Judge, Senior Divisions, as the case may be, by making an application within fifteen days from the date of declaration of the result of the election. What questions can be raised in such an application must, therefore, depend on what is comprehended within the expression "bringing the validity of the election into question". When an aggrieved person questions the decision of the Returning Officer rejecting a nomination paper, can it be said that he is questioning the validity of the election or bringing the validity of the election in question? That raises the question what is the true meaning to be given to the word "election" in Section 24."

The Division Bench then referred to the wider

interpretation placed on the term 'election' in **N.P.Ponnuswami**'s case (supra) and observed:

> "The context of section 24 also supports the view that the word "election" has been used in the section in a wide sense and not in a narrow sense. Section 24 occurs in Chapter III which contains a fasciculus of sections commencing from section 18 and ending with section 26 dealing, as the heading of the Chapter shows, with "Election, Appointment or Co-option of Members of Panchayats, Election Disputes Etc.". We have already pointed out that section 18 provides that election shall be conducted in the manner prescribed by the Rules. Section 19 deals with the circumstances in which members may be appointed in lieu of elected members. The division of the electorate into electoral divisions is provided in section 20 while section 21 provides for the preparation of the list of voters. Who shall be the person qualified to vote and be elected is dealt with in section 22 and section 22A imposes restrictions on simultaneous or double membership of Panchayats. Section 23 lays down the disqualifications which disentitle a person to be a member of the Panchayat or to continue as such member. Then comes section 24 which provides for the determination of validity of elections. Apart from there being nothing in the language of section 24 which would indicate that the word "election" has been used in a narrow sense, there is positive evidence in the section itself which shows that the word "election" as used in it has a wide meaning and questioning the validity of the election within the meaning of the section includes questioning of the decision of the Returning Officer as regards rejection of a nomination paper. Sub-section (2A) is a provisions which throws considerable light on this question. It clearly shows that the validity of an election can be questioned under section 24 on the ground of any breach of or any omission to carry out or any non-compliance with the provisions of the Act or the

rules whereby the result of the election has been materially affected. Unless such a ground is a valid ground available to an aggrieved person for questioning the validity of the election under the section, it is difficult to see why the legislature should have thought it necessary to introduce sub-section (2A) and particularly the Explanation to it. The Legislature was obviously anxious to provide that a mere error by the officer charged with carrying out the rules or a mere irregularity or informality not corruptly caused should not be a ground for questioning the validity of an election but it made it clear by enacting the Explanation that if there is any breach of or, any omission to carry out or any non-compliance with the provisions of the Act or the rules by reasons of which the result of the election has been materially affected, the election may be set aside by the Civil Judge under section 24. Now sub-rule (2) of Rule 14 lays down the grounds on which a nomination paper may be rejected by the Returning Officer. If the Returning Officer has rejected a nomination paper otherwise than in accordance with these grounds, the rejection of the nomination paper would clearly amount to a breach of or non-compliance with sub-rule (2) of Rule 14 and if in consequence of that, the result of the election has been materially affected – which it undoubtedly would be- the election can be set aside by the Civil Judge. The validity of the election can, therefore, be questioned by an aggrieved person under section 24 on the ground that a nomination paper was improperly rejected by the Returning Officer. This much is clear on a construction of section 24."

We may now refer to some judgments of this Court. In **S. Fakruddin v. Govt. of A.P.**[24], a Larger Bench of five Judges considered the validity of Andhra Pradesh Panchayat Raj (Conduct of Elections) Rules, 1994 and declared that the same

are ultra vires to Article 143-K (1) and (4). The Larger Bench also considered the scope of Article 243-O and held as under:

> ”1. A Constitution amendment which tends to take away the Constitutional Courts’ power that is the power of the High Courts under Art. 226 of the Constitution shall be invalid. There can be no matter in the hands of the Legislature in its function as the law maker which will be kept out of the scrutiny of the Courts however limited that scrutiny be. Even the conservative view that if there is an alternative effective. and efficient mechanism for judicial review which is as independent as the High Court, its power under Art. 226 of the Constitution will not be available, leaves scope for the Court to see whether the mechanism is such that the Court should refrain and not exercise its jurisdiction. We are inclined to extent this principle and hold as above as respects the matters which are sought to be excluded from the judicial review under Art. 243-O of the Constitution which has been brought in by the 73rd Amendment.
>
> 2. The provisions as to the exclusion of the jurisdiction of the Court introduced from time to time by the Constitution Amendments including Art. 243-O with which we are concerned bar the ordinary jurisdiction of the Courts and not the extraordinary jurisdiction of the High Courts and the Supreme Court under Art. 226, 32 or 136 of the Constitution of India.
>
> 3. The High Courts must observe a self-imposed limitation on their power to act under Art. 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to Legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are part of the

process of 'election' within the meaning of Art. 329 (b) of the Constitution.

4. The bar is to the ordinary jurisdiction of the Courts and not to the extraordinary jurisdiction under Art. 226 of the Constitution and Art. 136 thereof. It is not necessary for us therefore to pronounce that Art. 243 (O) is unconstitutional; simply it does not take away the power of this Court under Art. 226 of the Constitution to examine the validity of any law relating to the elections including the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Art. 243-K of the Constitution."

The appeals filed by the State Government and State Election Commission, which were registered as Civil Appeal Nos.9345-9350 of 1995 were disposed of by the Supreme Court on 8-4-1997 in the backdrop of the fact that earlier a direction was issued to the parties to maintain status quo and by an order dated 18-10-1995, the State Election Commission was allowed to declare the result of election. The relevant extract of order dated 8-4-1997 is reproduced below:

"It is agreed that elections are over. The results have been declared. The successful candidates have taken the oath of office. In view of the subsequent events it is not proper for this Court to consider the matters in detail at this stage. It is open to the aggrieved parties, if so advised, to take appropriate proceedings before appropriate forum wherein all the questions raised herein can be raised. If any proceedings are initiated, the appropriate forum will decide the matter as expeditiously as possible unfettered by the Judgment of the high Court. The appeals are dismissed accordingly ".

In **Sk. Khasim Bee v. State Election Commissioner**[25], a Division Bench of this Court considered the scope of bar contained in Article 243-O, referred to the Full Bench judgment in **S. Harinath v. State of A.P.**[26] and Larger Bench in **S. Fakruddin** (supra) and held:

> "From these decisions, it is evident that the Constitutional Courts alone are competent to interpret the Constitution and to adjudge about the constitutionality of the legislation and rules and the power of judicial review, which is one of the basic features of the Constitution, cannot be abridged or abrogated by bringing an amendment to the Constitution. Shri E. Manohar contended that above two Judgments of this Court are suspended by the Supreme Court and therefore they cannot be taken into consideration. Even if the contention of the learned Counsel is accepted, in view of the dicta laid down by the Supreme Court in the above cited decisions, we hold that judicial review is the basic structure of the Constitution and the same cannot be abrogated. The contention of Sri E. Manohar that Art. 243 (O) bars the extraordinary jurisdiction of High Court under Art. 226 of the Constitution is hot tenable. It is settled principle that where there is an effective alternative remedy under the statute, the High Court will not exercise its jurisdiction as a self-imposed restriction. In electoral matters, the High Court observes self-imposed limitations and declines to interfere with the election process when once the election notification is issued because they can effectively be agitated before the Election Tribunal. But, where the constitutional validity of an Act or a Rule or provision of an Act affecting the election is challenged, or where error in exercising such jurisdiction or mala fides or non-compliance of rules of natural justice established, the High Court has got ample power to render justice by exercising the power of judicial

review conferred on it under Art. 226 of the Constitution."

The Division Bench noted the judgments of the two Constitution Benches in **N.P. Ponnuswami** (supra) and **Mohinder Singh Gill** (supra) and held:

> "Thus, the observations indicate that the Court proceeded on the footing that ordinary jurisdiction of the Courts alone was excluded under Art. 329 and not the extraordinary jurisdiction of the High Court under Arts. 226 and 227 and of the Supreme Court under Art. 136 of the Constitution. When the ratio laid down in **N. P. Ponnuswami's case, (AIR 1952 SC 64)** (supra) was followed in **Mohinder Singh's case (AIR 1978 SC 851)** (supra), it cannot be said that the dicta laid down therein is completely barring judicial review."

The Division Bench then referred to the basic structure theory propounded in **Keshavananda Bharathi v. State of Kerala**[27] and **Minerva Mills Ltd. v. Union of India**[28] and proceeded to distinguish the judgments rendered with reference to Article 329 by making the following observations:

> "Having knowledge of the decisions of the Apex Court if the Parliament incorporate provisions later barring jurisdiction of the courts, it has to be presumed that the bar of jurisdiction is against the ordinary courts and not the extraordinary jurisdiction of the constitutional Courts of judicial review. Article 329 is part and parcel of the Constitution and whereas Art. 243 (O) was incorporated by 73rd Amendment to the Constitution which is after the decision of the Supreme Court that judicial review is one of the basic structures of the Constitution. Therefore, bar of interference by 'courts' in electoral matters has to be understood as the bar as against the ordinary courts and

not against the Constitutional Courts and it cannot be said that the Parliament intended to take away the power of judicial review of the Constitutional Courts by incorporating Article 243 (O). If Article 243 (O) of the Constitution has to be construed so as to bar the jurisdiction of the Constitutional Courts i.e. the High Court and the Supreme Court, the same will be against the basic structure or the basic feature of the Constitution and accordingly it is void."

In **Channala Ramachandra Rao v. State of A.P.**[29], a learned Single Judge considered a batch of writ petitions questioning the reservation of seats under the Andhra Pradesh Municipalities (Reservation of Offices of Chairpersons in Municipal Councils and Nagar Panchayats) Rules, 1995. It was urged on behalf of the respondents that the writ petitions were not maintainable in view of the bar contained in Article 243-ZG (a). The learned Single Judge referred to several decisions, most of which we have noted above, and culled out the following propositions:

"(i) By reason of Clause (a) of Art. 243-ZG, the Division of municipality into territorial constituencies called wards or allotment of seats to such wards or the notification specifying the offices of Chairpersons of municipalities reserved to persons belonging to STs. , SCs. , and/or BCs., cannot ordinarily be challenged under Art. 226 of the Constitution.

(ii) In view of the embargo placed by clause (a) of Art. 243-ZG, a law providing for delimitation of constituencies and allotment of seats to such constituencies made by the State Legislature under clause (6) of Art. 243-T read with clause (2) of Art. 243-ZA and the entry 5 of List II of Seventh schedule to the Constitution cannot be called in question under Art. 226 of

the Constitution.

(iii) The principles (i) and (ii) are subject to the condition that if the delimitation notification is arbitrary and in the sense that before delimitation no objections were invited and no hearing was given to a limited extent, the same is amenable to judicial review by this Court under Art. 226 of the Constitution."

In paragraph 68 of the judgment, the learned Single Judge referred to the order passed by the Supreme Court in Civil Appeal Nos.9345-9350 of 1995 preferred by the State Government and the State Election Commission against the judgment of the Larger Bench in **S. Fakruddin** (supra) and held that this Court is entitled to examine the issue unfettered by the judgment in **S. Fakruddin** (supra).

In **Prakasam District Sarpanchas Association v. Govt. of A.P.**[30], a Division Bench of this Court considered whether in the face of order passed by the Supreme Court, the judgment of the Larger Bench in **S. Fakruddin** (supra) could be treated as binding on the State Government. After taking note of the order dated
8-4-1997 passed by the Supreme Court in Civil Appeal Nos.9345-9350 of 1995 and the judgment in **Kunhayammed and others v. State of Kerala**[31], the Division Bench held that the judgment of the Larger Bench in **S. Fakruddin** (supra) is not available for implementation and is not binding on the respondents. Para 34 of the judgment of the Division Bench, which contain the above enunciation, read as under:

> "34. In view of the law laid down by the supreme Court in **Kunhayammed**'s case (supra), we have no hesitation to say that the Supreme Court kept all the issues raised before the Special Full Bench of this Court in **Fakruddin**'s case (supra) open for fresh adjudication and as such the decision of the special Full Bench in **Fakruddin**'s case (supra) merged with the order of the supreme Court dated 8-4-1997 passed in civil Appeal Nos. 9345-9350/95 and thus the decision rendered by the Special Full Bench of this Court in **Fakruddin**'s case (supra) is not available for implementation and is not binding on the respondents."

The three propositions laid down by the learned Single Judge in **Channala Ramachandra Rao v. State of A.P.** (supra) were approved by the Division Bench in **K. Pamulu v. Collector and Dist. Election Authority**[32] and indirectly approved by the Full Bench in **G. Kanaka Durga v. State Election Commissioner**[33]. In the latter judgment, the Full Bench referred to Article 243-O and observed:

> "By reason of the said provision, a bar has been created in the matter of interference by Courts in electoral matters. Although as noticed herein before, such a bar may not, in true sense, apply to constitutional remedies but it is now well settled that the Court while making an exception to the said provision of entertaining an application must, inter alia, be satisfied that the action on the part of respondents is wholly without jurisdiction."

In **A.P. Sarpanchas Association v. Govt. of A.P.**[34], the Full Bench considered the question whether a writ of mandamus be issued directing a legislative authority to make rules in

furtherance of a statutory provision and answered the same in negative. The Full Bench held:

> "1) The Court in exercise of its power under Article 226 of the Constitution cannot direct the State to legislate when there exists an enabling provision.
> 2) The Court's power in this regard is limited only in a case where a legislation does not confirm to the constitutional wisdom, the same either be declared ultra vires or may be read down or read up for upholding its validity; the Court can exercise its power of judicial review."

In **Komirisetty Rama Rao v. Collector, Guntur**[35], a Division Bench of this Court made a reference to the judgments of the Supreme Court in **State of U.P. v. Pradhan Sangh Kshetra Samiti** (supra), **Anugrah Narain Singh v. State of U.P.** (supra), the Larger Bench judgment in **S. Fakruddin** (supra), the Full Bench judgment in **G. Kanaka Durga** (supra), as also the judgment of the learned Single Judge in **Channala Ramachandra Rao** (supra) and held:

> "Therefore, the law may be taken as well settled that on a limited ground that before delimitation no objection was invited and no hearing was given the Court under Article 226 of the Constitution of India can review any order passed by a competent authority reserving the office of Sarpanch to SCs/ STs/ BCs."

In **Reddicherla Balaji Raju v. Election Officer**[36], a learned Single Judge noticed the bar contained in Article 243-O and held that the result of an election declaring a particular candidate to have been duly elected cannot be the subject matter of a judicial review proceeding because Article 243-O of the

Constitution is a clear bar from making any enquiry into the validity of the election of a returned candidate.

The propositions which can be culled out from the above noted judgments of the Supreme Court, this Court and of the Division Bench of Gujarat High Court are:

1) The word "election" appearing in Article 243-O and the provisions contained in the 1994 Act and the rules framed thereunder bears larger connotation. It embraces and includes all steps commencing from the date of notification by the competent authority, whereby the electorates are called upon to elect Sarpanchas and Ward Members and ending with declaration of result. Reservation of offices of Sarpanch and Wards in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women, preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny of nomination papers and withdrawal thereof, publication of the list of eligible candidates, allotment of symbols, appointment of election agents, the conduct of poll, counting of votes, declaration of results and all other ancillary steps taken for the purpose of holding elections fall within the ambit of the term "election". {**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency**, **Mohinder Singh Gill v. Chief Election Commissioner, Election Commission of India v. Shivaji** and **Election Commission of India v. Ashok Kumar** (supra)}

2) i) The bar contained in Article 243-O, which begins with non-obstante clause, debars all Courts from entertaining any challenge to law relating to delimitation of constituencies or allotment of seat made or purporting to be made under Article 243-K or election to the Panchayats. This bar also operates against the High Court's power of judicial review under Article 226. (**N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Durga Shankar Mehta v. Raghuraj Singh, Election Commission of India v. Shivaji** and **Election Commission of India v. Ashok Kumar** (supra)}

ii) The proposition contained in clause (i) above is subject to the condition that challenge to the delimitation may be entertained in exceptional cases where no objections were invited and no hearing was given provided that such challenge is made before issue of notification for holding election. {**State of U.P. v. Pradhan Sangh Kshetra Samiti** (supra)}

iii) The bar contained in Article 243-O (b) operates only till the adjudication of election dispute by an adjudicatory forum created by or under any law made by the Legislature of the State. An order made by an adjudicatory forum constituted under the law made by the State Legislature can be called in question by filing a petition under Article 226 of the Constitution.

3) The bar contained in Article 243-O operates at all stages of the election i.e. notification issued by the State Election Commission calling upon the electorate to elect Sarpanches and Ward Members; reservation of offices of Sarpanches in favour of Scheduled Castes, Scheduled Tribes, Backward Classes and Women; preparation, printing and publication of electoral rolls (provisional and final), filing of nomination papers, scrutiny and withdrawal thereof; allotment of symbols; appointment of election agents; counting of votes and declaration of result.

4) The bar contained in Article 243-O (b) does not operate qua challenge to the constitutionality of a statutory provision relating to elections, though, even in such a case, the High Court will be extremely loath to pass an interlocutory order which has the effect of stalling or jeopardizing the process of election or which may result in the constitutional hiatus on account of indirect violation of Article 243-K (3) read with Article 243-K (1).

5) The observations made in **Harnek Singh v. Charanjit Singh** (supra) have to be read in the light of the law laid down by the Constitution Benches in **N.P. Ponnuswami v. Returning Officer, Namakkal Constitutency**, **Durga Shankar Mehta v. Raghuraj Singh**, **Mohinder Singh Gill v. Chief Election Commissioner** (supra) and by three Judges Bench in **Election Commission of India v. Ashok Kumar** (supra).

6) The High Court may entertain petition under Article 226

of the Constitution if the prayer contained in such petition does not have the effect of interpreting or delaying the process of election {**Election Commission of India v. Ashok Kumar** (supra)}.

Before concluding, we consider it appropriate to observe that the judgment of the Larger Bench in **S. Fakruddin** (supra) cannot be treated as binding in view of order dated 8-4-1997 passed by the Supreme Court in Civil Appeal Nos.9345-9350 of 1995, the judgment of the Division Bench in **Prakasam District Sarpanches Association** (supra) and of the learned Single Judge in **Channala Ramachandra Rao v. State of A.P.** (supra), which has been approved by the Division Bench in **K. Pamulu v. Collector and Dist. Election Authority** (supra) and indirectly approved by the Full Bench in **G. Kanakadurga v. State Election Commissioner** (supra). The observations made by the Division Bench in **Sk. Khasim Bee v. State Election Commissioner** (supra) on the interpretation of Article 243-O are contrary to the subsequent judgments of the Supreme Court in **State of U.P. v. Pradhan Sangh Kshetra Samiti** (supra), **Anugrah Narayan Singh v. State of U.P.** (supra), **Jaspal Singh Arora v. State of M.P.** (supra) and **Election Commission of India v. Ashok Kumar** (supra). It is also apparent from the judgment of **Sk. Khasim Bee** (supra) that attention of the Division Bench was not drawn to the enunciation of law made by the Constitution Bench in **Durga Shankar Mehta** (supra) whereby the Supreme Court unequivocally declared that non-obstante clause contained in

Article 329 debars any other Court including the Supreme Court to entertain a petition calling in question any election to the Parliament or to the State Legislature. There can be no doubt that the Supreme Court is a Constitutional Court. Therefore, if the Constitution Bench has interpreted the non-obstante clause contained in Article 329 as giving overriding effect to that article qua other provisions of the Constitution including those relating to its own jurisdiction, the distinction sought to be made in **Sk. Khasim Bee**'s case (supra) between the Constitutional Court and other Courts in the context of Article 243-O cannot be held as correct. The observation of the Division Bench suggesting that the provisions of Article 243-O cannot be interpreted in the light of the law laid down by the Supreme Court with reference to Article 329 because that article was enacted as a part of the original Constitution and Article 243-O was added by Constitutional (Seventy-third Amendment) Act, 1992, proceeds on a wholly erroneous premise that the status of the Parliament is inferior to that of a constituent Assembly. After enforcement of the Constitution, the sole repository of the power to amend the Constitution is the Parliament alone. Of course, some of the provisions of the Constitution can be amended with the approval of the Legislatures of the States. Once the amendment is carried out, it becomes an integral part of the Constitution as originally framed and there can be no difference in the interpretation of the Articles which formed part of the Constitution as it stood on 26-1-1950 and those which have been added later on.

Reverting to the case in hand, we find that the petitioners

have challenged the legality of order dated 24-6-2006 issued by respondent No.4 for reservation of the offices of Sarpanchas of 18 Gram Panchayats in favour of Scheduled Tribes. The prayer made by them amounts to a challenge to the election to Gram Panchayat within the meaning of Article 243-O (b). Therefore, as a sequel to the discussion made in the earlier part of this order and the propositions laid down hereinabove, we have no hesitation to hold that the writ petition is not maintainable and is liable to be dismissed as such. Ordered accordingly.

Since the process of election was stalled on account of the interim order passed by the Court, State Election Commission is directed to take all steps for holding elections keeping in view the provisions of Article 243-K (3) so as to ensure that the newly elected body is in place before the expiry of the tenure of the existing elected body and there is no hiatus on account of lapse of time. Learned Government Pleader and Shri V.V. Prabhakara Rao, learned standing counsel for State Election Commission are directed to inform the concerned authorities of today's order so that they can initiate the steps necessary for conducting election well before the expiry of the tenure of the existing elected body.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

August 03, 2006.
svs

Note:
Registry is requested to mark L.R. copy.
(By order)
svs
PS to HCJ

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[1] AIR 1997 SC 1125
[2] (2005) 8 SCC 383
[3] AIR 1987 SC 386
[4] AIR 1952 SC 64
[5] AIR 1928 Madras 25
[6] AIR 1946 Lahore 85
[7] AIR 1954 SC 520
[8] AIR 1978 SC 851
[9] AIR 1984 SC 1912
[10] AIR 1988 SC 61
[11] 1995 Supp. (2) SCC 305
[12] (1996) 3 SCC 416
[13] AIR 1985 SC 1233 = (1985) 4 SCC 689
[14] 1996(6) SCC 303
[15] (1998) 9 SCC 594
[16] (2000) 8 SCC 216
[17] 1993 Supp. (2) SCC 433
[18] 1944 Supp. SCC 104 = AIR 1984 SC 1406
[19] (1993) 4 SCC 175
[20] (1998) 8 SCC 703
[21] AIR 2004 SC 3600
[22] (2005) 8 SCC 242
[23] 1965 (6) GLR 200 (D.B.)
[24] AIR 1996 AP 37 = 1995 (2) ALT 439 (Spl. F.B.)
[25] AIR 1996 AP 324 = 1996 (1) ALT 76 (D.B.)
[26] (1993) 2 ALT 471
[27] AIR 1973 SC 1461
[28] AIR 1980 SC 1789

[29] 2000 (2) ALT 655

[30] 2001 (1) ALT 138 (D.B.)

[31] (2000) 5 SCC 181

[32] 2001 (4) ALT 389 (D.B.)

[33] 2001 (4) ALT 476 (F.B.)

[34] 2001 (4) ALT 309 (F.B.)

[35] AIR 2001 AP 420

[36] 2001 (5) ALT 603